

WILLIAM BLENKARNE, } Appellant.
Vintner,

ROBERT JENNENS, and ANNE
his Wife (Daughter, Heir and
Executrix of CAREW GUIDOTT, Esq; deceased) and
ADRIAN MOORE, Gent. Respondents.

The Appellant's Case.

THAT the Appellant having lent a considerable Sum to *Carlton Whitlock*, deceas'd, to relieve him in his urgent Necessities, and to discharge him from an Execution he was then under; the said *Whitlock*, for the Appellant's Security, entred into a Judgment to him for 500 l. whereof 82 l. remaining due, the said *Whitlock* proposed to discharge it upon the Sale of some Copy-hold-Lands, which he, the said *Whitlock*, held of the Mannor of *Walton upon Thames*.

Nov. 23. 1699. That the said *Whitlock* being likewise indebted to Mr. *Carew Guidott*, deceas'd, late one of the Registers in Chancery, in 200 l. (for security whereof the said *Guidott* did take a Surrender of part of the said *Whitlock's* Copy-hold-Lands, and had also at the same time, from the said *Whitlock*, a Bond for payment thereof) But a Fine of about 25 l. being payable to the Lord of the Mannor, upon the said Surrender, before *Guidott* could be admitted; He, the said *Guidott*, did not think fit to get himself admitted, nor in order thereunto, did get his Surrender presented at the next publick Court, according to the Custom of the said Mannor; but did on the contrary, refuse to let the Steward keep it, to be presented at the then next Court, whereby it became void, by the Custom of the said Mannor: And tho' the said *Whitlock*, after the said Surrender became void, did offer to make to the said *Guidott* a new Surrender to supply the former, (as appears by *Whitlock's* Answer) yet the said *Guidott* refused to have it made, and thought fit to depend on his Bond-security, by which he gave the said *Whitlock* an Opportunity to sell or dispose of his said Estate.

May 6. 1701. That the Appellant being informed by the said *Whitlock*, That *Guidott's* Debt was really satisfied, which the Appellant was the rather induced to believe, because he found upon search of the Court-Rolls, that the said Surrender had not been presented in five Years time: AND the Appellant being advised that tho' *Guidott's* Debt should happen to be unsatisfied, yet the said *Guidott* having so waved, or by his wilful Neglect lost the Benefit of his Surrender, the Appellant had thereby a very legal and fair Advantage given him, to secure his own Debt of 82 l. which was as justly due to the Appellant, as the other Debt could be to *Guidott*, the same being a Judgment-Debt. AND the Appellant apprehending that in case he could find out any Purchaser for the said Lands, who might have a good Title to the same; That he, the said Appellant, was as much entituled in point of Equity, to obtain his said Debt by means thereof, as the said *Guidott* could be to secure his Debt, by obtaining a new Surrender.

March 29. 1703. The Appellant thereupon supposing the Respondent *Moore* (for several Reasons) might have an Inclination to purchase the said Lands, caused the said Purchase to be proposed to him, at which time the Appellant likewise acquainted him, that he, the Appellant, was to have 82 l. out of the Purchase-Money: And the said *Moore* accordingly shewed an Inclination to become the Purchaser thereof.

April 22. 1703. That the said Respondent *Moore*, having taken a View of the Estate, and perused the Court Rolls, and consider'd of the Title for near two Months before he paid his Money, did at length think fit to get his Purchase-Surrender presented, and himself admitted upon it at a publick Court held for the said Mannor; and having paid the Fees, and 25 l. for a Fine to the Lord, did afterwards pay 218 l. of the Purchase Money to the said *Whitlock*, and the remaining 82 l. (by the said *Whitlock's* Order) to the Appellant, upon which the Appellant did absolutely discharge his Judgment-debt of 82 l. by acknowledging Satisfaction upon Record of the said Judgment.

April 7. 1704. And tho' the Presentment of the said Purchase and Surrender was publickly transacted by the said *Moore* himself at a publick Court held for the said Mannor, yet the said *Guidott* did neither appear at the said Court to have his Mortgage-Surrender then presented, nor did he insist upon his having it presented at any other time, till about a Year after the Purchase-Money was paid by *Moore*, and after the Appellant had actually discharged his Debt as aforesaid (which was six Years after the said Mortgage-Surrender was originally taken by the said *Guidott*).

Trin. 1704. That the said *Guidott*, afterwards, exhibited his Bill in Chancery (which since his death hath been revived in the Name of the Respondents, *Jennens*, and his Wife) against the said *Whitlock*, *Moore*, *Medlicott*, (Steward of the Court) and the Appellant, praying that the said Purchaser may redeem his said pretended Mortgage, or be foreclos'd of that Part of the Lands which was compriz'd in the said Surrender made to him.

That the said *Guidott*, and his Executors did so far doubt of their Title under the said Surrender, that they prayed Relief likewise upon the said Bond out of the real and personal Estate of *Whitlock*, and did never yet think it worth their while to pay the Lord's Fine.

Nov. 25. 1707. Upon the Hearing of the said Cause at the Rolls, the Master of the Rolls was pleased to Decree, That the Appellant should pay back the 82 l. with Interest and Costs to the then Plaintiffs, and that *Moore* should pay the rest of *Guidott's* Debt, or be foreclos'd.

May 8. 1708. But *Moore* having appeal'd to the Right Honourable the Lord Chancellor (the now Appellant making no Defence upon that Hearing) his Lordship was pleased to Decree, That the Appellant should pay *Guidott's* whole Debt, Interest, and Costs.

July 3. 1708. The Appellant having thereupon likewise appealed to his Lordship, his Lordship did not think fit to alter his former Decree, otherwise than by giving the Appellant Liberty to make his Election to stand Purchaser in *Moore's* place; which if he did not comply within a Months time, his Lordship ordered that his former Decree should stand, with this farther Direction, That the Appellant in such Case should pay *Moore's* Costs.

That the Appellant afterwards finding that *Guidott's* Principal, Interest and Costs amounted to 356 l. 14 s. 4 d. And that whether he stood in the room of the Purchaser or not, he should lose above 500 l. thereby, besides the loss of his own just Debt, and his own Costs in the said Suit; did not think fit to stand to any such Election, whereby the said Order of the said 8th of May 1708. is become absolute upon him, which the Appellant is advised is not agreeable to Equity.

1. For that the Appellant, in point of Equity, had good Right to endeavour to secure his said Debt by the means aforesaid; and the Appellant's Debt being as just a Debt as the said *Guidott's*, and due upon as high a Security; and the said *Guidott* having by his own wilful Default lost the Advantage which he had at Law, ought not now to be prefer'd in Equity before the Appellant, the Appellant and Respondents being both just and independent Creditors.

2. For that if Pocket Surrenders be countenanced in Courts of Equity, the Lords of Mannors will be defeated of their just Fines, and Copyhold Titles become precarious and uncertain.

3. For that all the Notice that is proved upon the Appellant, before the time of the Purchase, amounts only to a Notice, that *Guidott's* Debt was intended to have been secured by a Mortgage, but was really satisfied, or at least, that he had neglected to perfect his Security in point of Law; whereby the said Appellant, who was no way interested or concerned for him to lose his own Debt, conceived himself both at Law and in Equity to be at liberty to get his own Debt as well as he could, as much as he the said *Guidott* was also at liberty to deprive the Appellant thereof, by taking from the said *Whitlock* the Means of paying the same, by getting the Lands into his security.

Note The Lord Chancellor and Master of the Rolls - For which and other Reasons the Appellant humbly hopes your Lordships will please to reverse the Decretal Orders as to the Appellant.

THO. POWYS.
N. LECHMERE.

and of different Judgments in this Case
Note Also if *Whitlock* surrenders and is countenanced in a Court of Equity, not
Lord of a Mannor can be bound in his fine and just bond as
Guidott looks in this Case will become a common practice to
cheat the Lord of his fine